HARDIAL SINGH SEKHON

v.

MDC SDN. BHD. & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[SUIT NO. C 6158 OF 1985]
21 JULY 1986

COPYRIGHT: *Plaintiff averred that he was the author and owner of copyright of "Customs Duties Order" - Section 5(1) of Copyright Act 1969 - Plaintiff averred that 1st defendant infringed the plaintiff's copyright of the said work - Whether said work original in character and eligible for copyright - Whether there was infringement of copyright.*

CIVIL PROCEDURE: *Application by defendants to strike out statement of claim under O.18 r. 19(1) of Rules of the High Court 1980 - Whether statement was frivolous, vexatious and an abuse of the process of the Court - Whether the statement should be struck out.*

This was an application by the defendants to strike out the statement of claim under O. 18 r. 19(1) of the Rules of the High Court 1980.

In the statement of claim the plaintiff averred that since 1977 he was the author and owner of copyright of the reproduced current "Customs Duties Order". He further averred that as he was a Malaysian citizen he was eligible for copyright in respect of the said work by virtue of s. 5(1) of the Copyright Act 1969 ("the Act"). He added that he had expended sufficient effort on the work in order to give it an original character. He therefore claimed that he had "the exclusive right to control ... the reproduction ..." of the work under s. 8(1) of the Act. He also averred that the 1st defendant, without the plaintiff's permission, had infringed the plaintiff's copyright in respect of the work. The plaintiff also made numerous other averments.

In his affidavit, the plaintiff stated that he had three causes of action against the defendants. His first cause of action was that the defendants had infringed his copyright in respect of what he claimed was his work namely the "Customs Duties Order". His second cause of action was that the defendant had "given inaccurate duties and taxes ... in the Malaysia Practical Guide to Customs Duties Order published by the 1st defendant...thus in contravention of Article 96 of the Federal Constitution". His third cause of action was that the 2nd defendant had made slanderous statement against him.

Held:

[1] In order to maintain an action for infringement of copyright, the plaintiff must show that the defendants, without the permission of the plaintiff, had done an act the doing of which was controlled by copyright. The plaintiff must plead that the said work was either a literary work or an artistic work, which was eligible for copyright. He must show that sufficient effort had been expended by him on the making of the work to give it an original character. He must also show that he was the author of the work.

[2] There was nothing to show that the "Customs Duties Order" was original in character. The plaintiff's work was a secondary work copied from the various official publications. Anyone who had access to the Government Orders and the *gazettes* could produce a similar publication as the said work. It was therefore not original in character and accordingly it

was not eligible for copyright. Since the said work was not a work eligible for copyright the question of infringement did not arise. So the plaintiff had no cause of action on the question of copyright infringement.

[3] With regard to the second cause of action, the plaintiff claimed that the defendants had given inaccurate duties and taxes in their guide book. In the context of his statement of claim, this cannot be regarded as a cause of action.

[4] There was nothing to show that the 2nd defendant had made a slanderous of defamatory statement or any disparaging remark against the plaintiff. The plaintiff's allegation on slander was frivolous and vexatious.

[5] The plaintiff's statement of claim not only disclosed no cause of action, it was also frivolous and vexatious. He made several averments in the statement of claim which were immaterial and irrelevant. Furthermore he made wild allegations and confusing statements. His claim was clearly an abuse of the process of the Court.

[Statement of claim struck out. Plaintiff to pay costs to defendants.]

Legislation referred to:
Copyright Act 1969, ss. 4, 5((1), 8(1), (1)(a), 14(1)
Federal Constitution, art. 96
Rules of the High Court 1980, O. 18 r. 19(1)

For the Hardial Singh Sekhon - in person
For the defendants - Inderjit Singh; M/s. Inderjit Singh & Co.

JUDGMENT

Zakaria Yatim J:

This was an application by the defendants to strike out the statement of claim under O. 18 r. 19(1) of the Rules of the High Court 1980.

In para. 1 of the statement of claim the plaintiff averred that since 1977 he was the author and owner of copyright of the reproduced current Customs Duties Order. In para. 2 he averred that as he was a citizen of Malaysia he was eligible for copyright in respect of the Customs Duties Order by virtue of s. 5(1) of the Copyright Act 1969. According to him the Customs Duties Order was a literary or artistic work which was eligible for copyright protection. He added that he had expended sufficient effort on the "work" in order to give it an original character. He therefore, claimed that he had "the exclusive right to control...the reproduction ..." of the "work" under s. 8(1) of the Act. In para. 3 of the Statement of Claim he averred that the first defendant, without the plaintiff's permission, infringed the plaintiff's copyright in respect of the Customs Duties Order. In para. 4 he alleged that the first defendant was acting against public interest. In para. 5 he averred that the second defendant provided information to the public in return for a fee. He alleged that the information came from his "work". In para. 6 he averred that he had written a notice to the first defendant informing him that he had contravened the plaintiff's copyright. In para. 7 he averred that he had written similar notice to the second defendant. He also averred that the second defendant had made "slanderous statements to the customers of the plaintiff".

In para. 9 he averred that the first defendant was a company registered with the Registrar of Companies whose address was at 42, Jalan Brunei Utara, Off Jalan Pudu, Kuala Lumpur. In the same paragraph he alleged that the first defendant printed the infringing copies. In para. 10 he stated that the second defendant was the circulation manager of the first defendant company.

In para. 11 the plaintiff alleged that the second defendant had made a written "slanderous statement to the public ..." In para. 12 he averred that he had lost customers "due to the slanderous statement of the Second Defendant". In para. 14 the plaintiff repeated his allegation that the defendants has spoken slanderous words.

In para. 17 the plaintiff averred that through his skill he had produced "original work". In para. 18 he again referred to the provisions of s. 8(1) of the Act. In para. 19, he averred that copyright in government publications is vested in the Government of Malaysia, "but the Government of Malaysia copyright does not entitle the right to control plaintiff by virtue of s. 8(1)(a) ..." In para. 21 he alleged that the first defendant deliberately infringed the copyright of the plaintiff.

In para. 41 the plaintiff made an averment of "passing off"

The rest of the paragraphs in the statement of claim contained a repetition of the allegations against the defendants as well as immaterial and irrelevant averments.

In his affidavit affirmed on 20 January 1986, the plaintiff stated that he had three causes of action against the defendants. His first cause of action was that the defendants had infringed his copyright in respect of what he claimed was his work namely the Customs Duties Order. His second cause of action was that the defendant had "given inaccurate duties and taxes... in the Malaysia Practical Guide to Customs Duties Order published by the First Defendant... thus in contravention of Article 96 of the Federal Constitution". His third cause of action was that the second defendant had made slanderous statement against him.

The plaintiff's main allegation against the defendants was that the defendants had infringed his copyright. In order to maintain an action for infringement of copyright, the plaintiff must show that the defendants, without the permission of the plaintiff, had done an act the doing of which was controlled by copyright. (s. 14(1)). The plaintiff must plead that the Customs Duties Order was either a literary work or an artistic work, which was eligible for copyright. He must show that sufficient effort had been expended by him on the making of the "work" to give it an original character. (s. 4). The "work" must be first published in Malaysia. He must also show that he was the author of the work.

Having examined the plaintiff's statement of claim there was nothing to show that the Customs Duties Order was original in character. In para. 1 of his statement of claim he explicitly stated that the Customs Duties Order was a reproduction work. In para. 16, 17, 20 and 21, it was explicit that the Customs Duties Order was a reproduction of all the information contained in the various Customs Orders as published from time to time. His work was a secondary work copied from the various official publications. Anyone had access to the Government Orders and the gazettes and anyone could produce a similar publication as the Customs Duties Order. The Customs Duties Order was, therefore, not original in character and accordingly it was not eligible for copyright. In his statement of claim the plaintiff referred to the Customs Duties Order as his "work". In my opinion it was not a 'work" within the meaning of the Copyright Act. Since the Customs Duties Order was not a work eligible for copyright the question of infringement did not arise. I found the plaintiff had no cause of action on the question of copyright infringement.

With regard to the second cause of action, the plaintiff claimed that the defendants had given inaccurate duties and taxes in their guide book. In the context of his statement of claim, this cannot be regarded as a cause of action.

The plaintiff's third cause of action was that the second defendant had made slanderous statement against him. There was nothing in the statement of claim to show that the second defendant had made a slanderous or defamatory statement or any disparaging remark against the plaintiff. The plaintiff had not disclosed any cause of action on slander against the second defendant. In my view the plaintiff's allegation on slander was frivolous and vexatious.

After reading the plaintiff's statement of claim I found that it not only disclosed no cause of action, it was also frivolous and vexatious. He made several averments in the statement of claim which were immaterial and irrelevant. In para. 41 of his statement of claim he used the term "passing-off" and made averment as if he was alleging a trade mark infringement. Furthermore in his statement of claim he made wild allegations and confusing statements. His claim was clearly an abuse of the process of the Court.

For the reasons stated above, I struck out the statement of claim under O. 18 r. 19 and ordered the plaintiff to pay costs to the defendants.

Also found at [1986] 2 CLJ 244